



CALIFORNIA STATE
PUBLIC WORKS BOARD

GRAY DAVIS, GOVERNOR

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Special Meeting

STATE PUBLIC WORKS BOARD

October 24, 2003

MINUTES

PRESENT:

Ms. Shelley Mateo, Deputy Director, Department of Finance
Mr. Bob Garcia, Chief Financial Officer, Department of Transportation
Mr. Cy Rickards, Deputy Director, Legal affairs, Department of General Services
Ms. Cindy Aronberg, Deputy Controller, State Controller's Office
Mr. Francisco Lujano, Director, Securities Management Division, State Treasurer's Office

ADVISORY MEMBER:

Director, Employment Development Department

LEGISLATIVE ADVISORS:

Assembly Member Darrell Steinberg
Assembly Member Wilma Chan
Assembly Member Fabian Nunez
Senator Betty Karnette
Senator Wesley Chesbro
Senator Gilbert Cedillo

STAFF PRESENT:

James E. Tilton, Administrative Secretary, State Public Works Board
Karen Finn, Assistant Administrative Secretary, State Public Works Board
Tamara Moss, Executive Secretary, State Public Works Board
Jim Martone, Budget Analyst, Department of Finance

OTHERS PRESENT:

Aaron Todd, State Treasurer's Office
Aaron Alcarez, State Treasurer's Office
Lisa Paterno, California Department of Correction
Dwight Weathers, Department of General services
Tim Shelley, Senator Karnette's Office
Ernie VanZant, California Department of Corrections
Deborah Cregger, Staff Counsel/Public Works Board

CALL TO ORDER AND ROLL CALL:

Ms. Mateo, Chairperson, Deputy Director, Department of Finance at 2:00 pm called the meeting to order. Mr. Tilton, Administrative Secretary for the State Public Works Board called the roll. A quorum was established.

APPROVAL OF MINUTES

Mr. Tilton reported that staff has reviewed the minutes from September 22, 2003 'Special' meeting and believe them to accurately represent the actions of the Board and recommended approval.

Hearing no objections, the minutes from the September 22, 2003 'Special' meeting were unanimously approved.

BOND ITEMS:

Mr. Tilton reported that there were two bond items. Item #1, Department of General Services, Butterfield State Office Complex. This item will authorize the sale of lease revenue bonds with a par value estimated at \$46 million and TIC at 6.50 percent. Staff recommends approval.

A motion was made by Ms. Aronberg, and Second by Mr. Garcia to adopt Bond Item #1.

Bond Item #1 was adopted by a 5-0 vote.

Bond Item #2, Department of Corrections, California State Prison-Kern County at Delano II. This item will authorize the sale of lease revenue bonds with par value estimated at \$509 million and TIC at 6.50 percent. Staff recommends approval.

A motion was made by Mr. Garcia, and Second by Mr. Rickards to adopt Bond Item #2.

Bond Item #2 was adopted by a 5-0 vote.

CONSENT CALENDAR:

Mr. Tilton stated that there was one Consent Item. However, we are pulling Item #3, Department of Corrections, California State Prison-Kern County at Delano II, Approve Fund Shift from Lease Revenue Augmentations to General Fund. Through the bond sale, we originally thought that there were issues with the portion of the property to be obtained, but later discovered that there were no issues. Therefore, there is no need for a fund shift.

ACTION ITEMS:

Mr. Tilton stated that there was one Action Item. Item #4, Department of General Services, Department of Corrections, Delano II, Surface Rights (Mineral Interest). This item will adopt a resolution of necessity authorizing the use of eminent domain (condemnation) to acquire surface rights of entry associated with the underlying mineral interests on State owned property consisting of approximately 250-acres in Kern County for use by the Department of Corrections.

Mr. Tilton stated that before the Board takes action on this item, we will have Ms. Deborah Cregger, Staff Counsel to the Public Works Board, walk you through the statutes, which authorize the Board to take this action, and explain the specific components of this action. In addition, Mr. Ernie VanZant, Deputy Director, Department of Corrections, will talk about the necessity of this action, and Mr. Dwight Weathers, Department of General Services, who will walk us through the due diligence process.

Mr. Cregger stated that the property acquisition law is the main body of law that which the Board acquires all property, which includes the fee interests and lesser interests. Specifically in the property acquisition law, the Board is authorized to proceed with eminent domain action. The Code of Civil Procedures set forth the rules and process by which the Board engages in, in an eminent domain action. We are not here today to talk about condemnation of the fee interest, but to talk about a lesser interest (mineral interest). The mineral interest has two parts, the below surface mineral interest and the surface. Specifically, Code of Civil Procedures Section 1240.110 would authorize the Board to use the power of eminent domain to acquire any interest in property necessary for its use including but not limited to mineral interest, either both the surface or below surface mineral interest. Before the Board/State can entertain an action of eminent domain, a resolution of necessity must be adopted. The Board has brought discretion, following due notice; there are specific notice provisions in the Code of Civil Procedure that have been followed. There are four specific issues that the Board must consider in making this factual finding in order to adopt the resolution of necessity. They are:

- (1) The public interest and necessity require the Delano II Prison project.
- (2) The Delano II Prison project is planned and located in a matter that will be most compatible with the greatest public good and least private entry.
- (3) The acquisition of the property interest described in the resolution (surface rights of access to the underlying mineral estate) are necessary for the Department of Corrections project to go forward to ensure the State's unfettered use an occupancy of the Delano II Prison project.
- (4) The Board must find the facts support either an adjusted fair offer has been made in accordance with Government Code Section 7267.2 or if an offer has not been made to any of the mineral interest owners, that due diligence has been exercised to locate those individuals.

Mr. VanZant stated that he would give an overview of the criticality of this project, how it fits into the critical public safety mission of the Department of Corrections, and how the process to locate the site we believe is most efficient for this project, has ended up in a location that is of the most public good with the least private damage. First of all, the prison that is being sited is a 5,000-bed facility, to house maximum-security inmates. The maximum-security inmate population is the most impacted in the CDC. It is the one that poses the most risk from a safety and security stand point for staff and inmates and poses the most risk from the standpoint of public safety. It's also the population that the Department is most impacted in as far as having inadequate capacity as we are today. This is why the Delano project was specifically selected to be an all maximum-security prison. The Department has classification levels that range from level 1 (minimum) to level 4 (maximum). They are specifically designed to meet that mission, being that the higher end inmates (the more seriously violent) to be able to control and contain violence. Today, the Department has over eight thousand maximum-security inmates that have been forced to be housed in minimum-security prisons because there aren't enough maximum-security prisons. The housing of those maximum-security inmates and minimum-security inmates has had a domino effect of forcing out minimum-security inmates into gymnasiums and dormitories. Each situation poses a threat to both inmates and staff safety. This safety issue was demonstrated in a riot earlier this month at the Duel Vocational Facility in a large dormitory where level 4 inmates were housed in a level 1 facility, which took staff over an hour to regain

control. Overcrowding and the fact that inmates that would have normally been housed in cells were housed in this dormitory setting caused it. This demonstrates why we need to have the right kinds of facilities for the right kind of inmate. Again, it poses a safety and security risk for both staff and inmates. This prison was debated and approved by Legislature as a maximum-security facility. It is more expensive because of it being maximum, but that's what our mission demands at this point. Referring back to the eight thousand inmates that do not have housing; this is after double-celling 90 percent of them, so that's using all available cell space and still having to move them down to a lower security prison. In addition to that, our projections show that while there are some elements of the Corrections population that has stabilized or in fact declined, such as the female population (low end defenders), which may decline even further with some of the initiatives provided by the Legislature. The high-end defender (maximum-security, the serious and violent) continues to grow....modestly, but still grow and we are out of capacity. Again this prison is essential to our mission.

This prison was litigated through the environmental impact report process by a group call Critical Resistance of which they litigated the fact whether this prison should be built or not. They essentially were an anti-prison group. It was litigated at both the Superior and Appellate Court level and in both occasions the State prevailed. Our arguments also included the criticality of this prison.

Mr. Garcia asked if there are any other facilities available that can be converted into the kind of facility needed.

Mr. VanZant stated no. And the reason being is that the lower level security prisons are built as large dormitories much like the style of a gymnasium. And in a large dormitory, a level 4 inmate may, for a while, live okay next to a level 1 inmate, but these inmates are classified based on their risk level of behavior. And once that behavior begins, the ability to be able to control and contain that violence is very critical. Our maximum-security prisons are built with very small controllable/containable pods, where no more than twenty-four cells share the same day room for exactly that same reason. They are also built with more direct observation/control by staff and armed staff out of necessity. The lower-level prisons are dormitories and to use them as maximum-security prisons is neither economically or operationally possible.

Mr. VanZant stated that the Department started looking for sites in the early 1990s, right around the passage of the three strikes law when they knew that the inmate population was going to impacted mostly with the higher end of offenders. The Department's policy is to build in communities that want them. The Department does not want to impose a new prison on a community. Both the City of Delano and the County of Kern, passed resolutions unanimously by both bodies, asking the Department to build a second facility in Delano (the first being a reception center). Following that resolution of support, the Department began asking the City to identify possible sites to locate the facility. The City did so, and came up with a total of nine possible sites. As the Department completed their preliminary reviews, seven of those sites were not workable because some of them were not build able, and some of them had developed areas. There were two remaining that were on the west side of the city that through the Department's initial feasibility study looked viable. The Department had numerous rights of entry to go in and do the necessary studies. And ultimate the Department certified the site. Because of the time difference the Department had to go through a supplemental EIR process to update a variety of data that was collected in the first EIR, to make sure that all was accurate. We were litigated by the Critical Resistance group and had to go through the Superior Court where the Department was asked to clarify more points in the cumulative report area. After complying with this request it was determined that the information obtained was adequate, and it was then that it was appealed to the Fifth District Court in Fresno who also upheld that the EIR was adequate. During this process through the Department of General Services we were in contact with the landowners. We were trying to ensure that we could negotiate a fair deal with

each landowner. The Department of General Services were very diligent and applied as much effort as they could to contact all of the landowners and as a result we obtained fee title to all of the parcels with no eminent domain asked of the Board. We proceeded to try to get the mineral rights which was much more complex. With a number of parcels totaling 480-acres, the Department found the best possible site for operation.

Mr. Weathers stated that we have acquired all the sites that were outlined in the project through negotiations. We have acquired title on about 50 percent of the mineral rights on the property. In some cases we have 50 percent and others 75 percent and even 100 percent of the mineral rights. We did this through an approved appraisal. We have not been able to locate the property owner of the 6-acres that Mr. VanZant was speaking of (which was identified as the parcel in blue that was presented at the meeting). The Department staff tried to locate the property owner and also hired an independent contract investigator to locate the party. The independent contract investigator reviewed the original documents to see if an address could be found on the owners, but was unable to find one. People with similar names were contacted, but they were not the owners of the said property, nor the heirs of the property. Since we are unable to locate the property owners, the only recourse was a quiet title action through the Attorney General's Office and the Public Works Board must authorize that quiet title action through commendations. The Department has been negotiating over a two-year period, trying to find the mineral interests. They were severed from the fee interests in most cases. The Department went through a diligent process with both the owners that were located and those that were not.

Ms. Mateo asked over what time was DGS searching for the property owners that have not been located.

Mr. Weathers stated over about a two and a half year period. Quite often, minerals rights are through exceptions in deeds. There is a process that the Attorney General's Office goes through once an action is filed.

Mr. Weathers stated that the 80-acre parcel, is the parcel that the State owns 87 percent of the mineral rights. The Department has been in negotiations with the property owner of this parcel, on an approved appraisal, for two and half years, to try to settle. Staff from DGS called the property owner to determine if they would be interested in attending the meeting today, and the owner said that they received an invitation letter from the Board and declined to appear and have decided to settle with the State on the approved appraisal. DGS staff contacted the title company, and it is confirmed that they have the documents from the property owner, but we do not have title until we close escrow. Finally, we have the 160-acre parcel, of which we own 50 percent of the mineral rights. Again, we've been negotiating with this property owner for over two years. This owner wants 14 times the approved appraisal amount. It does not appear that we will be able to settle with this property owner. However, they have considered an exchange of the mineral rights for drill sites on the property. But as of current, we have not been able to successfully locate sites that could be used for drilling.

Mr. VanZant stated that the CDC offered a potential drill site that is adjacent to the parcel, but the property owner did not feel that it was adequate for his needs and in turn refused the offer. Relative to the site itself, this site is a very constrained tight site relative to most of our prison construction and somewhat of an unusual shape. Typically the Department has tried to acquire 640-acres in the construction of a prison for a variety of essential needs. (1) to maintain an adequate buffer between operations and any other operations in the area including homes and or businesses and (2) the fact that over the course of the life of the prison, often times we find a great need for the property for expanded purposes of water or waste water. In the life of the prison, we do have needs that often times are not included in the initial design. For example,

we are in the process of adding mental health buildings to most of our facilities because of the addition of a major mental health program. So, there are some concerns about the unknown amount of acreage on a site that is constrained. Just having an entity without any conditions around it on the prison property does pose serious cause of concern about the long-term compatibility. We believe that it is better for the Department to be able to operate with the minimum level of buffer and no other operations in which we have compatibility issues. We do take the fact that this is bond funded very seriously, but we do not know the nature of what would be caused by someone exercising their surface rights and whether or not that would cause drainage issues or other kinds of problems that we as the Department (Corrections) would be responsible for. Not knowing the amount or the placement, but knowing that what we have is a public safety mission with serious custodial issues, we would recommend that we not share with anyone for the reasons stated.

Mr. Tilton stated that a letter was received from the Delano 160 Vineyard Company questioning the Resolution of Necessity. The first point addressed is they disagree with the price that has been offered. The second point is that they are asking for is access to their mineral rights adjacent to their property (north or east). There is still an ample amount of construction in those areas. The issue of providing a site just north or east of their property has already been addressed in terms of not just future construction but for activities that are currently on the property. By looking at the map, there seems to be extreme limitations.

Ms. Mateo asked if the areas to the north and east are the only alternatives that would satisfy this property owner.

Mr. Tilton stated that we offered the west area and the property owner declined (note: the south area is the road).

Mr. VanZant stated that the reason for offering the area to the west is because it was being acquired for wastewater treatment and it is also undeveloped field. To the north of the site, there are some open areas where there are no buildings and no infrastructure plan. But there is activity occurring in that area, such as the lower level inmate housing. The issue of contraband becomes an even greater problem.

Mr. Jerry Leong, Department of General Services-Acquisitions Unit, stated that the property owner of Delano 160 has consulted with Tri-Valley Oil and Gas Company who has had active operations in this area. Per their conversation, Delano 160 was told that geologically that the area toward the northeast was preferred and that the location to the west was not feasible (note: Delano 160 is located on the south-west end of the property).

Mr. Tilton stated that when the action was previously brought to the Board we were condemning both the surface rights as well as the mineral rights, because we were advised that if we take away the surface rights and prevent the person from having access to the mineral rights, the State must in fact pay for those. However, the current goal is to protect the surface rights. The action today would propose us to take the surface rights and leave the property owner the mineral rights in the event that in the future if the property owner found a way to access the minerals he could. So, even after taking action, the property owner's access to the minerals is still open. In turn the property owner could choose to keep open access to those rights.

Ms. Mateo stated that since the property owner is challenging our evaluation, please describe the process of the evaluation.

Mr. Weathers stated that they used a geologist who is an expert in evaluation of petroleum to determine what the value of these rights are based on what he believed to be the potential of

what could be on the property. DGS has to approve the value (which they did) and made the offer to the property owner, which is prescribed by law. At this time is when the property owner then countered with the amount of 14 times the appraised amount, but has not submitted any evidence to support his conclusion of value.

Mr. Rickards asked if there has been any independent evaluation conducted by the owner.

Mr. Weathers stated no. And presuming that the Board approves this action, we will have an opportunity in court to justify the number that his appraiser comes up with.

Mr. Tilton stated in summary that we take these actions very seriously, and it is important that we demonstrate that due diligence has been properly completed. The first issue that the Department of Corrections has identified is that there is a public interest of necessity and the process that they have outlined for identifying this site by definition provides a site that has the best public good and the least private impact. We believe that the Department of General Services has done all of the procedural things that are appropriate over the last two and half years to notify the property owners. After the action of the Board, there will be continued dialog with these owners to try and settle a working agreement.

Ms Cregger stated that the motion at hand is to adopt the Resolution of Necessity and then the matter gets referred to the Attorney General's Office who prosecutes the litigation and as Mr. Tilton has said, there is opportunity for settlement negotiations.

To clarify the motion, Mr. Rickards stated that what is before the Board is to vote on the finding of necessity.

Ms. Cregger acknowledged that he was correct.

A motion was made by Mr. Rickards, and Second by Mr. Garcia to approve Action Item #4.

Action Item #4 was adopted by a 3-0 vote.

Mr. Tilton stated that there were no items of other business.

NEXT MEETING:

Mr. Tilton noted that next regularly scheduled meeting is Friday, November 7, 2003, at 10:00 am, in Room 112.

Having no further business, the meeting was adjourned at 2:50 pm.

BOND ITEM

BOND ITEM – 1

DEPARTMENT OF GENERAL SERVICES (1760) BUTTERFIELD STATE OFFICE COMPLEX

Authority: Section 14669.35 of the Government Code

a. Adopt a resolution to:

1. Authorize the sale of the State Public Works Board Lease Revenue Bonds–
Department of General Services, 2003 Series D, Butterfield State Office Complex
2. Approve the form of and authorize the execution of Transfer Agreement between the
Department of General Services and the State Public Works Board.
3. Approve the form of and authorize the execution of Facility Lease between the
Department of General Services and the State Public Works Board.
4. Approve the form of and authorize the execution of a Supplemental Indenture or
Indenture, as necessary, between the State Treasurer and the State Public Works
Board.
5. Approve the form of and authorize the execution and delivery of a Preliminary Official
Statement.
6. Approve and authorize the execution and delivery of an Official Statement.
7. Approve the form of and authorize execution of amendment to the Site Lease and
Facility Lease to the Franchise Tax Board Phase 2 project.
8. Approve other related actions in connection with the authorization, issuance, sale,
and delivery of said revenue bonds.

TOTAL ESTIMATED PROJECT COSTS:

\$33,186,000

APPROVED.

BOND ITEM

STAFF ANALYSIS – 1

Department of General Services
Butterfield State Office Complex

Action Requested

The requested action would authorize the sale of the lease revenue bonds for this project.

Scope Description

This project is within scope. The Butterfield State Office Complex project is located in unincorporated Sacramento County, California. The full Butterfield Office Complex consists of the acquisition, design and construction of an office building, warehouse, central plant, parking and associated infrastructure. The portion of the project being financed and refinanced by the 2003D Bonds consists of the acquisition of approximately 9 acres of land and the design and construction of the warehouse central plant and site work. The warehouse is an approximately 45,000 square foot, concrete slab/braced frame building. The central plant houses an emergency generator, chillers and boilers that will serve both the Butterfield State Office Complex and the existing utilities and roadways, and construction of approximately 2,200 parking spaces and landscaping. The building portion of the Butterfield State Office Complex is under construction and it will constitute part of the project upon the sale of additional Bonds to finance such improvements.

Funding and Project Cost Verification

This project is within cost.

\$33,186,000 total project costs for acquisition, design, and construction

CEQA

The Department of General Services certifies that the project is in compliance CEQA requirements.

Project Schedule

The project schedules are as follows:

The project will be completed on December 31, 2003.

Staff Recommendation: Approve the resolution.

BOND ITEM

BOND ITEM – 2

DEPARTMENT OF CORRECTIONS (5240)
CALIFORNIA STATE PRISON–KERN COUNTY AT DELANO II
California State Prison–Kern County at Delano II

Authority: Chapter 54/99

a. Adopt a resolution to:

1. Authorize the sale of the State Public Works Board Lease Revenue Bonds– Department of Corrections, 2003 Series C, California State Prison-Kern County at Delano II.
2. Approve the form of and authorize the execution of Transfer Agreement between the Department of Corrections and the State Public Works Board.
3. Approve the form of and authorize the execution of Facility Lease between the Department of Corrections and the State Public Works Board.
4. Approve the form of and authorize the execution of a Supplemental Indenture or Indenture, as necessary, between the State Treasurer and the State Public Works Board.
5. Approve the form of and authorize the execution and delivery of a Preliminary Official Statement.
6. Approve and authorize the execution and delivery of an Official Statement.
7. Approve other related actions in connection with the authorization, issuance, sale, and delivery of said revenue bonds.

TOTAL ESTIMATED PROJECT COSTS:

\$336,742,000

APPROVED.

BOND ITEM

STAFF ANALYSIS – 2

Department of Corrections
California State Prison-Kern County at Delano II, Kern County

Action Requested

The requested action would authorize the sale of the lease revenue bonds for this project.

Scope Description

This project is within scope. The California State Prison--Kern County at Delano II (Delano II) is located on a site in Kern County, California, near the southern end of the San Joaquin Valley. The Delano II project site is located approximately 2.5 miles west of the urbanized area of the City of Delano, 30 miles north of Bakersfield, and approximately 0.5 miles southwest of the developed portion of the existing North Kern State Prison.

Delano II is a 2,248-cell maximum-security prison with a 400-bed minimum support facility. The semi-autonomous facilities A, B, C and D will contain four prototypical 128-cell housing units. Additionally, there will be two Administrative Segregation Housing Units containing 100 cells each. Perimeter towers positioned along a double-fenced security perimeter will surround Delano II with an electrified fenced located between the double fences. Support facilities, such as central administration, maintenance, warehouse and visitor processing building, will be constructed outside the secure perimeter as a part of Delano II. An onsite wastewater treatment facility and an effluent disposal property will be constructed to service the needs of Delano II, and constitutes a part of the Delano II project.

Funding and Project Cost Verification

This project is within cost.

\$360,742,000 total estimated project cost

\$336,742,000 project costs previously allocated from lease-revenue financing

\$24,000,000 project costs previously allocated from the General Fund

CEQA

The Department certifies CEQA requirements have been met. A Notice of Determination was filed with the State Clearinghouse on June 9, 2000. During the litigation period for the project, a lawsuit was filed. After the Department completed a court-ordered revision to the Cumulative Impacts Analysis of the Subsequent Environmental Impact Report, a new Notice of Determination was filed with the State Clearinghouse on December 13, 2001, and the waiting period expired on January 14, 2002. On April 4, 2002, the court issued a decision finding the Revised Cumulative Impacts Analysis to be adequate and that all CEQA requirements had been met. A Notice of Appeal was filed on July 9, 2002. The 5th Court of Appeals heard the matter on August 11, 2003, and issued a ruling favorable to the State of California on August 18, 2003, affirming the lower court's decision.

Project Schedule

The project schedule is as follows:

Complete construction: September 2004

Staff Recommendation: Approve resolution.

CONSENT ITEM

CONSENT ITEM – 3

**DEPARTMENT OF CORRECTIONS (5240)
CALIFORNIA STATE PRISON–KERN COUNTY AT DELANO II**

Authority: Chapter 54/99

a. Approve fund shift from lease revenue augmentations to General Fund

PULLED.

CONSENT ITEM

STAFF ANALYSIS – 3

ITEM PULLED.

ACTION ITEM

ACTION ITEM – 4

**DEPARTMENT OF GENERAL SERVICES (1760)
CALIFORNIA DEPARTMENT OF CORRECTIONS (5240)
DELANO II, SURFACE RIGHTS (MINERAL INTEREST)
KERN COUNTY**

Project Number COR-051.1, Parcels 9267-2 thru 4, 9268-1, 9268-2, 9269-1

Authority: Government Code Section 15819.295

- a. Adopt a Resolution of Necessity authorizing the use of eminent domain (condemnation) to acquire outstanding surface rights of entry associated with the underlying mineral interest on State owned property (APN: 520-120-03, 04 & 07 and 520-130-04 & 05) in Kern County for use by the Department of Corrections**

APPROVED.

ACTION ITEM

STAFF ANALYSIS – 4

Department of General Services
Department of Corrections
Delano II, Surface Rights (Mineral Interest)

Action Requested

The requested action will adopt a Resolution of Necessity authorizing the use of eminent domain (condemnation) to acquire outstanding surface rights of entry associated with the underlying mineral interest on State owned property (APN: 520-120-03, 04 & 07 and 520-130-04 & 05) in Kern County for use by the Department of Corrections.

Scope Description

The project provides for acquisition of real property, site studies, environmental studies, master planning, preliminary plans, and working drawings needed to construct the proposed Delano II State Prison facility. The California Department of Corrections (CDC) is constructing a prison capable of accommodating up to 5,160 inmates on a 480-acre site. The prison facility will be located within a double-fenced security perimeter with minimum-security facilities located outside the double-fenced security perimeter but within the prison property boundary fence. Facilities designed to accommodate uses such as administration, central maintenance, warehouse, vehicle maintenance, central and satellite kitchens, and indoor and outdoor recreation would also be included as part of the prison facility. An electrified fence will be constructed within the double fenced security perimeter. The required infrastructure developments will include two on-site wells and wastewater treatment plant with storage ponds.

The Delano II State Prison facility site is State owned property, which was acquired during the early 2000's for the purpose of constructing the proposed prison, but portions of the acquisition did not include mineral interests. The State Public Works Board (Board) approved the site acquisition for the prison facility site on September 8, 2000. At the time of land acquisition, Department of General Services (DGS) recognized the need to acquire the outstanding mineral interests that include surface rights of entry. Acquisition of the surface rights of the underlying mineral interests are necessary to ensure that the operation of the facility cannot be interrupted by future onsite extraction and/or exploration of minerals. This is especially important since the Delano II State Prison facility is being financed with lease revenue bonds and the presence of outstanding mineral interests has become a disclosure matter.

The DGS contracted with an investigator to locate the owners of outstanding mineral interests, and contracted with a geologist and appraiser to establish the fair market value of the mineral interests. The investigator identified 8 (fractional) owners of the outstanding mineral interests and DGS has been involved in ongoing negotiations with the owners that were locatable. To date, three owners have sold their full mineral interest to the State, three are still negotiating and considering the State's offer price, and two could not be located. In addition, two of the owners have entered into lease agreements with an oil company who retains a leasehold interest in a portion of the mineral interests including the surface rights. However, the State recently acquired a waiver of surface access with the oil company. The State currently controls 72.5% of the surface rights of entry associated with the prison site's underlying mineral interests.

By law the owner of mineral rights has the legal ability to utilize as much of the land surface as needed to economically develop the mineral estate; such rights are generally superior to the property rights held by the owner of the land. In addition, the owner of the mineral interests need not compensate the owner of the land for loss in use or damage to structures caused by the mineral development activities. Consequently, the State, as owner of the land, needs to

acquire these outstanding mineral interests to ensure the CDC's unfettered right to use and occupy the prison facility without interruption of ongoing operations.

In order to adopt the Resolution of Necessity that is required to initiate the eminent domain (condemnation) proceedings, the Board must consider and find the following:

1. The public interest and necessity require the proposed project;
2. The proposed project is planned or located in a manner that will be most compatible with the greatest public good and least private injury;
3. The property described in the resolution is necessary for the proposed project; and
4. That either a just and fair offer of purchase was made in accordance with Government Code Section 7267.2 or the offer has not been made because the owner cannot be located with reasonable diligence.

Funding and Cost Verification

This project is within cost. Government Code Section 15819.295, authorizes \$311.5 million be available for capital outlay for the California State Prison-Kern County at Delano II from funds derived from lease-purchase financing. The mineral interests can be acquired within the funds available and in accordance with the intent of the Legislature.

CEQA

A Notice of Determination was filed with the State Clearinghouse on December 13, 2001, and the waiting period expired on January 12, 2002.

Other:

- The purchase price does not exceed estimated fair market value as determined by a Department of General Services approved appraisal.
- There is no implied dedication involved with this project.
- There is no relocation assistance involved with these property interests.
- All known property owners were given written notice of the hearings as required by Code of Civil Procedure Section 1245.235

Staff Recommendation: Adopt a Resolution of Necessity authorizing the use of eminent domain (condemnation) to acquire surface rights of entry associated with the underlying mineral interests on State owned property (APN: 520-120-03, 04 & 07 and 520-130-04 & 05) in Kern County for use by the Department of Corrections.

OTHER BUSINESS

REPORTABLES

Respectfully Submitted,

JAMES E. TILTON
Administrative Secretary